

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 25, 2013

In the Matter of SNIDE, Minors.

No. 313992

Kent Circuit Court

Family Division

LC Nos. 10-054380-NA

10-054381-NA

Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to the two minor children under MCL 712A.19b(3)(a)(ii), (c)(i), and (g). We affirm.

Within the first twenty months of the birth of the oldest child, a daughter, in January 2009, respondent was convicted of operating a vehicle while impaired and improper use of a financial transaction device. In October 2010, the police executed a search warrant for the respondent and mother's¹ apartment wherein the police discovered an active methamphetamine laboratory. Respondent and the mother went into hiding to avoid law enforcement, and arrest warrants were issued. An order was entered directing authorities to take into protective custody the minor daughter, along with the mother's child from a previous relationship. The other minor child at issue in these proceedings, a son, had not yet been born. In a search for the two children, an investigator with Child Protective Services (CPS), accompanied by law enforcement, went to the home of respondent's grandmother. Respondent's grandmother was argumentative, hostile, and uncooperative. The investigator later testified that she was "[s]wearing, cussing, [and] wanted us to go."

In a continuing attempt to locate the children, the CPS investigator next phoned respondent's mother in Detroit. She claimed to be caring for respondent's minor daughter, but after telling the investigator that she would call back to set up a meeting so that the investigator could see the child, respondent's mother never called back, nor did she return the investigator's phone calls. After CPS later received information suggesting that the minor daughter was with respondent's grandmother, the investigator returned to her home but again was not provided any

¹ At the termination hearing, the mother voluntarily terminated her parental rights to the children.

information or assistance. In December 2010, the minor son was born in Kent County after respondent and the mother returned from being out of state, and the child was taken into protective custody pursuant to a court order. The mother informed the CPS investigator that the minor daughter was probably with respondent's mother or grandmother, but she was unsure which one had the child. A preliminary hearing was held a short time later, and the court warned that anyone who tried to hide the minor daughter would be subject to contempt and incarceration. Immediately after the hearing, the CPS investigator went to the home of respondent's grandmother and located the minor daughter.² The minor daughter and son were placed in the same foster care home, where they thrived throughout the proceedings. Respondent and the mother were arrested on outstanding warrants for manufacturing methamphetamine.

In April 2011, following an adjudication trial, the trial court took jurisdiction over the children. Thereafter, respondent repeatedly tested positive for drugs, including methamphetamine, and missed multiple drug screens. With respect to reunification services and goals and the treatment plan, respondent was mostly noncompliant or failed to benefit from the assistance. Respondent eventually pleaded guilty to maintaining a methamphetamine laboratory and was incarcerated from September 2011 to February 2012. There was a short period of time thereafter in which respondent participated in services, substantially complied with the treatment plan, and had negative drug screens. However, in July of 2012, respondent appeared for a hair follicle test, but the agency was unable to perform the test because respondent had shaved all the hair from his body, ostensibly to avoid the detection of drugs. At about this time, respondent was arrested for stealing batteries and sunglasses and was charged with retail fraud. Respondent thereafter absconded from his probation and his whereabouts were unknown. At the time of the November 15, 2012, termination hearing, respondent's whereabouts remained unknown, and he had not seen the children or contacted the caseworker since July 30, 2012. The trial court found clear and convincing evidence in support of the statutory grounds set forth above and that termination was in the children's best interests. Termination of respondent's parental rights was therefore ordered.

During the various proceedings, there was testimony about an incident during supervised parenting time where respondent's mother, who had provided transportation for respondent and the mother to the visit, became very upset and began yelling and screaming, making the foster parent afraid to exit the building. Initial home studies relative to respondent's mother and grandmother resulted in a caseworker opining that placement with them would not be appropriate considering their behavior in failing to cooperate with CPS's efforts to locate the minor daughter and because there was a danger that they would allow respondent and the mother to have access to the children. Additionally, there was testimony that, while she at first was hesitant to offer to care for the minor son given his age and was worried that she could not keep respondent away from the children, respondent's grandmother was now prepared to accept

² Respondent's grandmother claimed that the minor daughter was dropped off at her home by the mother on the day of the hearing so she would not have to be taken to court. Respondent's grandmother denied ever harboring any children, and she denied the investigator's claims about her behavior during their meetings.

placement of the children. A subsequent home study found that placement with respondent's grandmother would be acceptable, and this was confirmed in a more thorough, follow-up study. In addressing the issue of placement at the termination hearing, the trial court acknowledged the most recent home studies, but noted the obstructive behavior by respondent's mother and grandmother early on, leaving the court to wonder whether they were reliable and would follow court orders. The court clearly found credible the CPS investigator's account of the interactions with respondent's grandmother, rejecting her version of events, and we will not disturb that credibility determination. See *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011) (we give regard to the trial court's special opportunity to judge the credibility of witnesses). The trial court rejected delaying termination and placement with a relative, especially given that the children had been in a stable environment for a lengthy period of time and were excelling.

Respondent's sole argument on appeal is that termination was improper because the trial court failed to order relative placement for the children and did not consider the possibility of relative placement when making its best-interest determination. We disagree. "This Court reviews for clear error the trial court's ruling that . . . termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court is not required to place a child with relatives. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), rev'd on other grounds by *In re Morris*, 491 Mich 81; 815 NW2d 62 (2012); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Rather, the trial court is required to make its placement decisions on the basis of the child's best interests. *In re Rood*, 483 Mich 73, 95; 763 NW2d 587 (2009); *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012); *In re McIntyre*, 192 Mich App at 52. Here, the minor children were placed together in a non-relative foster home, where they remained for the duration of the case. As reflected above, there were valid concerns by the trial court in deciding not to place the children with respondent's mother or grandmother, and by the time the agency approved respondent's grandmother, the children had lived continuously in the same foster home for more than 18 months. Placement with respondent's grandmother so late in the proceedings would have been disruptive to the children's stable environment created by their foster family and would have been contrary to their best interests. The children's caseworkers had previously testified that the children were thriving in the foster home and were bonded with their foster family. On the record before us, the trial court did not clearly err by determining that it was in the children's best interests to have them remain in foster care. Respondent is not entitled to relief on the basis that the trial court did not place the children with relatives.

We likewise reject respondent's claim that he is entitled to relief on the basis that the trial court did not consider the possibility of relative placement when making its best-interest determination. This Court has held that "because 'a child's placement with relatives weighs against termination . . . ' the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "[T]he fact that the children are in the care of a relative at the time of the termination hearing is an 'explicit factor to consider in determining whether termination

was in the children's best interests[.]” *In re Olive/Metts Minors*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich at 164. Indeed, the matter must be expressly addressed by the trial court as part of the best-interest determination or reversal is required. *In re Olive/Metts Minors*, 297 Mich App at 43. In the present case, however, the record establishes that neither of the children was placed with a relative at the time of the termination hearing. In fact, they had never been placed with a relative by the court. Thus, relative placement was not an explicit factor for the trial court to consider in determining whether termination was in the children's best interests. We also note that the trial court discussed at some length the issue of placement with respondent's mother and grandmother in rendering its ruling.

The panel in *In re Olive/Metts Minors* acknowledged that a “trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests[.]” *Id.* On the record before us, we hold that the trial court did not clearly err in finding at least one statutory ground for termination or in finding that termination was in the children's best interests. *In re Hudson*, 294 Mich App at 264 (“This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.”). Respondent's substance abuse and criminal behavior led to the children's removal and continued throughout the case. At the time of termination, respondent's whereabouts were unknown, he had multiple warrants out for his arrest, and he had not seen his children in approximately 3-1/2 months. At the termination hearing, the children's caseworker testified that respondent was further from being able to care for his children than he was when the case began. Under the circumstances, there was no sound reason to delay termination on the basis of possible placement with a relative. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Deborah A. Servitto